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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,135	05/14/2007	Jochen Fassnacht	10191/4605	9310
26646 7590 04/06/2010 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER MEYER, JACOB B				
ART UNIT 3618		PAPER NUMBER		
MAIL DATE 04/06/2010		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/575,135

**Applicant(s)**

FASSNACHT, JOCHEN

**Examiner**

JACOB MEYER

**Art Unit**

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 9-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 06 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SF/85)  
Paper No(s)/Mail Date 04/06/2006, 03/21/2008, 02/03/2009, 09/14/2009  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

2. The information disclosure statements (IDS) submitted on 03/21/2008, 02/03/2009, and 09/14/2009 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.
3. The information disclosure statement filed 04/06/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 9-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally submitted claims were drawn to a method for regulating the state of charge of an energy accumulator. The figures and specification of record are directed to such an invention. However, in the preliminary amendment filed 04/06/2006, the original claims were cancelled and all newly submitted claims were drawn to a device for actuating an actuator system for protecting a pedestrian as claimed. There is no description of such a device other than that which is found in the claim limitations.

6. Claims 9-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As noted above, the originally submitted claims were drawn to a method for regulating the state of charge of an energy accumulator. The figures and specification of record are directed to such an invention. However, in the preliminary amendment filed 04/06/2006, the original claims were cancelled and all newly submitted claims were drawn to a device for actuating an actuator system for protecting a pedestrian as claimed. All of the claim limitations lack a description in the specification or drawings that enable one skilled in the art to make and/or use the invention.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 4 and 6 of claim 9, "an arrangement for" is unclear and confusing. A

recitation to “an arrangement” does not require any structural limitation, and therefore renders the following limitation indefinite. Additionally, claim 9 recites the limitation “the comparing” in 8. There is insufficient antecedent basis for this limitation in the claim. If this limitation is in reference to the “first comparison,” it should be positively recited.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 9-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishizaki et al (US Pub. No. 2002/0043417 A1).

Regarding claim 9, Ishizaki et al (hereinafter as Ishizaki) discloses a device for activating an actuator system for protecting a pedestrian (Abstract), the device being connected to an environment sensor system (at least 504) and a contact sensor system (at least 503), the device comprising: an arrangement for performing a first comparison of a first signal from the contact sensor system to a threshold (at least [0020]); and an arrangement for changing one of the threshold and the first signal as a function of a second signal of the environment sensor system, the actuator system being activated as a function of the comparing (at least Figures).

Regarding claim 10, Ishizaki discloses the invention further comprising: an arrangement for comparing the first signal to a noise threshold to ascertain a starting point for the first comparison (at least paragraph [0020]).

Regarding claim 11, Ishizaki discloses the invention wherein the second signal includes a relative speed (at least paragraph [0017]).

Regarding claim 12, Ishizaki discloses the invention further comprising: an arrangement for determining a starting point for the first comparison from a third signal of the environment sensor system (Figures 8-57).

Regarding claim 13, Ishizaki discloses the invention further comprising: an arrangement for changing the threshold as a function of time (Figures 8-57).

Regarding claim 14, Ishizaki discloses the invention further comprising: an arrangement for setting the noise threshold as a function of the third signal (Figures 8-57).

Regarding claim 15, Ishizaki discloses the invention further comprising: an arrangement for one of differentiating and integrating the first signal for comparison at least once (at least paragraph [0127]-[0128]; Figures 8-57).

Regarding claim 16, Ishizaki discloses the invention wherein the first signal itself is used for the first comparison (at least paragraph [0020]; Figures 8-57).

11. Claims 9-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Nobusawa et al (US Pat. No. 6,332,115 B1).

Regarding claim 9, Nobusawa et al (hereinafter as Nobusawa) discloses a device for activating an actuator system for protecting a pedestrian (Abstract), the device being connected to an environment sensor system (Figure 2, at least 21) and a contact sensor system (at least 3), the device comprising: an arrangement for performing a first comparison of a first signal from the contact sensor system to a threshold; and an arrangement for changing one of the threshold

and the first signal as a function of a second signal of the environment sensor system, the actuator system being activated as a function of the comparing (at least Figures 2-13).

Regarding claim 10, Nobusawa discloses the invention further comprising: an arrangement for comparing the first signal to a noise threshold to ascertain a starting point for the first comparison (at least Figures 2-13).

Regarding claim 11, Nobusawa discloses the invention wherein the second signal includes a relative speed (at least Figures 2-13).

Regarding claim 12, Nobusawa discloses the invention further comprising: an arrangement for determining a starting point for the first comparison from a third signal of the environment sensor system (at least Figures 2-13).

Regarding claim 13, Nobusawa discloses the invention further comprising: an arrangement for changing the threshold as a function of time (at least Figures 2-13).

Regarding claim 14, Nobusawa discloses the invention further comprising: an arrangement for setting the noise threshold as a function of the third signal (at least Figures 2-13).

Regarding claim 15, Nobusawa discloses the invention further comprising: an arrangement for one of differentiating and integrating the first signal for comparison at least once (at least Figures 4-13).

Regarding claim 16, Nobusawa discloses the invention wherein the first signal itself is used for the first comparison (at least Figures 2-13).

***Conclusion***

12. Regarding claims 9-16 currently rejected under 35 USC §112, second paragraph, please note that rejections under 35 USC 102 and 103 should not be based upon considerable speculation as to the meaning of the terms employed and assumptions as to the scope of the claims when the claims are not definite. See *In re Steele* 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962). When no reasonably definite meaning can be ascribed to certain terms in a claim, the subject matter does not necessarily become clearly anticipated or obvious, but rather the claim becomes indefinite. See *In re Wilson* 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Accordingly, the currently pending claims, which have been examined as best understood despite the current rejections under 35 USC §112, first and second paragraph, may be subject to prior art rejections not set forth herein upon the clarification of the claim language.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sasaki '362, Parks '166, Wallman '273, Fredriksson '677, Ishizaki '555, Kalliske '472, Schramm '049, Green '040, Sasaki '402, '108, Murakami '220, Tanaka '643, Takafuji '157, Stephan '286, Ishizaki '936, Recknagel '607, Igawa '677, Hosokawa '917, Rao '461, Ishizaki '086, '613, '278, and '914 disclose vehicle pedestrian protection systems including actuators and associated actuator control systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACOB MEYER whose telephone number is (571)270-3535. The examiner can normally be reached on Monday - Thursday 9am to 7pm EST.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PAUL N. DICKSON can be reached on 571-272-7742. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GLENN DAYOAN/  
Supervisory Patent Examiner, Art Unit  
3612

/J. M./  
Examiner, Art Unit 3618